IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - V

CP (IB) 507/MB/2021

Under section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of
Shirpur Gold Refinery Limited

Having registered office at :- 135, Continental Building, Dr. A. B. Road, Worli, Mumbai- 400018

….. Applicant/ Operational Creditor

Versus

Magicstone Traders Private Limited

Having registered office at: - Office No. 1, SN. 57/3, Mayura Vihar Blg-Q, Kothrud Pune - 411029

….. Corporate Debtor

Order Delivered on :- 02.11.2023

Coram:

Mr. Anuradha Sanjay Bhatia
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Operational Creditor : Adv. Ms. Namrata Biyawat

For the Corporate Debtor : Adv. Ms. Ashwini Gawde

ORDER

Per: - Shri. Kuldip Kumar Kareer (Judicial Member).

1. The present Petition has been under Section 9 of the Insolvency Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by M/s. **Shirpur Gold Refinery Limited** (hereinafter called as “Operational Creditor”) praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely **Magicstone Traders Private Limited** (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called "Code") for resolution of an unresolved Operational debt of Rs. 94,95,02,739/- (Rupees Ninety-Four Crore Ninety Five Lakhs Two Thousand Seven Hundred and Thirty Nine Only)

The submissions of the Operational Creditor are as follows:

2. The Petitioner is a public limited company engaged in the business of precious metal. The Respondent approached the Petitioner and purchased precious metal. After the said arrangement, the Petitioner supplied the precious metal to the Respondent and raised invoices for the same as per the following detail:-

Sr. No.	**Date of Invoice**	**Amount (In Rupees)**
1.	09.12.2019	12,05,10,000
2.	12.12.2019	141,243,900
3.	16.12.2019	160,474,000
4.	19.12.2019	100,631,000
5.	19.12.2019	523,806
6.	19.12.2019	346,765
7.	19.12.2019	12,622
8.	23.12.2019	173,173,900

3. The total Debt amounted to Rs. 94,95,02,739/- (Rupees Ninety-Four Crore Ninety Five Lakhs Two Thousand Seven Hundred and Thirty Nine Only) including the principal amount of Rs. 68,38,08,226/- (Rupees Sixty-Eight Crore Thirty Eight Lakhs Eight Thousand Two Hundred and Twenty Six) and interest of Rs. 16,08,35,097/- (Rupees Sixteen Crore Eight Lakhs Thirty-Five Thousand and Ninety Seven) at the rate of 24% interest rate and late payment charges of 1% on the delayed amount.

4. Seeing that the Respondent was in default of its obligations towards the Petitioner, the Petitioner via various reminders requested the Respondent to make the payments but the same were not heeded.

5. Accordingly, on March, 2021, the Petitioner issued a Demand Notice in terms of Section 8 of the Insolvency and Bankruptcy Code, 2016 upon the Respondent with regard to the Respondent's outstanding liability to the Petitioner, the details of which are more particularly enumerated in the petition and demand notice.
6. The Respondent, however, did not issue a notice of dispute insofar as the outstanding dues are concerned within ten days of the receipt of the demand notice. Therefore, the Petitioner has sought to invoke the jurisdiction of this Hon'ble Tribunal seeking initiation of CIRP against the Corporate Debtor. Hence the Petition.
7. No reply was filed by the Respondent despite the fact that sufficient opportunity was given for the purpose.

ANALYSIS AND FINDINGS

8. We have heard the counsel for the parties and gone through the records.

9. It is the case of the Petitioner that he supplied goods to the Corporate Debtor worth of Rs. 68,38,08,226/- invoices issued between 09.12.2019 and 23.12.2019. The invoice has been placed on record as Annexure (e). Though the Petitioner has claimed interest @ 24% per annum, however, no contract between the parties has been placed on record whereby it might have been agreed that in case of default of payment of invoices, the Corporate Debtor would be liable to pay interest @ 24%. There is, however, a stipulation in the invoices that the payment has to be made within 60 days from the date of each invoice which were issued between 09.12.2019 and 23.12.2019. The payment of the invoices, therefore, became due between 09.02.2020 and

23.02.2020. The present Petition was filed on 06.04.2021 which is well within the period of limitation.

10. The Petitioner have proved on record a copy of the demand notice dated 28.03.2021, but no reply is shown to have been filed by the Corporate Debtor raising any pre-existing disputes with regard to the payment of the outstanding principal amount of Rs. 68,38,08,226/-. Apart from this, no reply has been filed to controvert the averments made in the Petition with the result that all assertions made in the Petition have gone unrebutted and are deemed to have been accepted as correct by the Corporate Debtor.

11. As a result of the above brief discussion, we hold that the Petitioner has been able to establish the factum of existence of operational debt and its default committed by the Corporate Debtor who has not been able to pay despite having received the demand notice. Therefore, this Petition under Section 9 of the Code deserves to be admitted. It is ordered accordingly in the following terms:-

ORDER

a. **The above Company Petition No. (IB) 507(MB)/2021 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Magicstone Traders Private Limited.**

b. This Bench hereby **appoints Mr. Sandeep Jawaharlal Singhal , Registration No: IBBI/IPA-001/IP-P00519/2017-18/10920 as the Interim**

Resolution Professional having his registered office at 313/314 Giri Shikhar, Plot No. 8891, Opposite Goenka Hall, JB Nagar, Andheri East, Mumbai-400059, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of **Rs. 5,00,000/-** (Rupees Five Lakhs Only) towards the **initial CIRP cost** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub- section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

12. **Accordingly, this Petition is admitted.**

13. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANURADHA SANJAY BHATIA
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)